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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DAVID CAIN, Plaintiff and Appellant, v. PETE SMITH et al., Defendants and Respondents.	H033471 (Santa Clara County Super. Ct. No. CV062393)

I. INTRODUCTION

Appellant David Cain, a self-represented litigant, filed a complaint alleging that respondent Pete Smith, a real estate agent for respondent Intero Real Estate Services, Inc., had made a telephone call to Cain in which Smith used racial epithets and made threats of physical violence. After a court trial in February 2008, judgment was entered in defendants' favor.

We understand Cain to challenge (1) the judgment, (2) the trial court's order denying his motion for judgment on the pleadings, and (3) the trial court's order denying his motion to set aside the judgment. For the reasons explained below, we determine that Cain has failed to meet his burden as an appellant to affirmatively demonstrate error. Therefore, we will affirm the judgment and posttrial orders.

II. BACKGROUND

Our summary of the factual and procedural background of this case is drawn from the minimal record on appeal and the parties' briefs.

In 2006, Cain filed a complaint alleging that defendant Smith, a real estate agent with defendant Intero Real Estate Services, Inc., had made a single telephone call to Cain in which Smith used racial epithets and made threats of physical violence. After two rounds of demurrers, the complaint was reduced to a cause of action for racial discrimination in violation of public policy under Civil Code section 51 et seq. and a cause of action for intentional infliction of emotional distress. Neither the original complaint, the amended complaint, the demurrers, or the trial court's orders on the demurrers were included in the record on appeal.

The matter proceeded to a one-day court trial on February 5, 2008. Cain represented himself at trial and testified on his own behalf. Defendants' witnesses included defendant Smith and Terry Meyer, an owner-broker of the Intero Real Estate Services, Inc. office in San Jose.

According to the parties, following the court trial the trial court entered judgment in defendants' favor on May 5, 2008. Neither the judgment nor the proof of service for the judgment were included in the record on appeal.

On May 30, 2008, Cain filed a motion for judgment on the pleadings and a motion to set aside the judgment. Only the motion to set aside the judgment was included in the record on appeal. The trial court issued an "ORDER ON MOTIONS" on July 14, 2008, in which the court denied both motions and ordered defense counsel "to submit a formal order to the Court for signature."

Thereafter, on August 8, 2008, the trial court issued its "ORDER DENYING MOTIONS FOR: [¶] 1. JUDGMENT ON THE PLEADINGS [¶] 2. ORDER TO SET ASIDE JUDGMENT." In the order, the trial court stated that the motion for judgment on the pleadings was denied because it was untimely filed under Code of Civil Procedure

section 438, subdivision (e)[1] and did not meet the statutory requirements for the motion set forth in section 438. As to the motion to set aside the judgment, the trial court stated that the motion was untimely filed under section 663a, or, in the alternative, was untimely filed as a motion for new trial under section 659. The August 8, 2008 order was served by mail on August 11, 2008.

Cain filed a notice of appeal from a "Judgment after court trial" and a "Judgment after an order granting a summary judgment motion" on October 9, 2008.

III. DISCUSSION

We understand Cain to argue on appeal that the trial court erred in entering judgment in defendants' favor after the court trial and in denying his motion for judgment on the pleadings and his motion to set aside the judgment. Defendants contend that the appeal must be dismissed because the notice of appeal was untimely filed more than 60 days after entry and service of the May 5, 2008 judgment (Cal. Rules of Court, rule 8.104) and the time to file the notice of appeal was not extended by the invalid motion to set aside the judgment. (Cal. Rules of Court, rule 8.108(c).)

We need not address defendants' timeliness arguments because we find Cain's failure to meet his burden as an appellant to affirmatively demonstrate error is fatal to his appeal. For that reason, we will provide an overview of the general rules that govern our appellate review and also place certain burdens on the appellant.

In conducting our appellate review, we presume that a judgment or order of a lower court is correct. "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Therefore, a party challenging a judgment or

[1] All further statutory references are to the Code of Civil Procedure, unless otherwise noted.

an appealable order "has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) " 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Thus, where the appellant fails to provide an adequate record as to any issue the appellant has raised on appeal, the issue must be resolved against appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

Where the sufficiency of the evidence is challenged on appeal, "the reviewing court must start with the presumption that the record contains evidence sufficient to support the judgment; it is appellant's burden to demonstrate otherwise." (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 368.) Therefore, when challenging the sufficiency of the evidence, the appellant is required to provide a summary of *all* of the evidence, not merely his or her own evidence, with citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) In other words, we presume that the record contains sufficient evidence to support the trial court's finding, unless the appellant affirmatively demonstrates that the evidence is insufficient. (*Baxter Healthcare Corp. v. Denton*, *supra*, 120 Cal.App.4th at p. 368.)

The appellant must also present argument supported by relevant legal authority as to each issue raised on appeal. " '[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]' [Citations.] This principle is especially true when an appellant makes a general assertion, unsupported by specific argument, regarding insufficiency of evidence. [Citation.]' " (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Cain is not exempt from compliance with these basic rules of appellate practice because he is representing himself on appeal. "Under the law, a party may choose to act

as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citations]." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Thus, a self-represented litigant is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Having reviewed the basic rules of appellate review and appellate practice, we turn to the issues that Cain seeks to raise on appeal. Our review of Cain's opening brief indicates to us that Cain is contending that the evidence presented at the court trial on February 5, 2008, supports his claim that defendants are liable for money damages as a result of defendant Smith's telephone conversation with Cain in which Smith allegedly used racial epithets and made threats of physical violence.

We find no merit in Cain's contention because we must presume that substantial evidence supports the trial court's findings in defendants' favor, due to Cain's failure to provide a summary of all the evidence and an adequate record on appeal. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881; *Ballard v. Uribe, supra,* 41 Cal.3d at p. 574.) The record is inadequate because it lacks the operative complaint and the May 5, 2008 judgment. We also determine that Cain failed to meet his duty as an appellant "to articulate and support his own arguments on appeal in a manner that will make them susceptible of rational evaluation by this court. [Citations.]" (*Dahms v. Downtown Pomona Property & Business Improvement Dist.* (2009) 174 Cal.App.4th 708, 719.) Accordingly, we find no merit in any of Cain's claims of trial court error with respect to the entry of judgment in defendants' favor on May 5, 2008.

We also understand Cain to contend on appeal that the trial court erred in denying his motion for judgment on the pleadings. Since the motion for judgment on the pleadings was not included in the record on appeal, the record is inadequate for appellate review of this contention. We must therefore resolve the issue against Cain. (*Maria P. v. Riles, supra,* 43 Cal.3d at p. 1295.)

Finally, as to the motion to set aside the judgment, we observe that while the record on appeal does include this motion, it lacks defendants' opposition to the motion and the reporter's transcript for the hearing on the motion. Since Cain failed to provide a record that is adequate for meaningful appellate review of the trial court's order denying his motion to set aside the judgment, we must affirm the trial court's order denying the motion.

For these reasons, we find that Cain failed to affirmatively demonstrate error as to any of his claims on appeal and we will affirm the judgment and posttrial orders.

IV. DISPOSITION

The judgment of May 5, 2008, and the August 8, 2008 order denying the motion for judgment on the pleadings and the motion to set aside the judgment are affirmed. Costs on appeal are awarded to respondents.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.